IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

OP.No. 13586 of 2002(P)

PETITIONER:

SHAHI SHIPPING LTD., KOCHI,
G.V.IYER ROAD, W.ISLAND, KOCHI-3, REPRESENTED BY
BRANCH MANAGER, T.J.ABRAHAM.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.V.B.HARI NARAYANAN
SRI.N.D.PREMACHANDRAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO IRRIGATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER, OFFICE OF THE EXECUTIVE ENGINEER,
IRRIGATION DIVISION, ERNAKULAM.

3. THE CHIEF INSPECTOR OF BOATS,
OFFICE OF THE CHIEF INSPECTOR OF BOATS,
IRRIGATION DEPARTMENT, KAKKANAD.

4. THE CANAL OFFICER, ERNAKULAM.

5. THE DEPUTY CONSERVATOR,
COCHIN PORT TRUST, W.ISLAND, KOCHI-3.

6. M/S. ROM MARITIME LIMITED, HAVING ITS REGISTERED OFFICE AT
"103 PANCYAVADI APARTMENTS, AMBADIPALAM ROAD,
JANATHA P.O. VITTILLA COCHIN 19, REP. BY ITS MANAGING
DIRECTOR SRI. BENNY ROHAL, IMPLEADED AS PER ORDER
DT. 17-1-2006.

BY ADV. SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR
GOVERNMENT PLEADER SRI. SURARSHAN
SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 03/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF LICENCE GRANTED BY MAHARASHTRA MARINE BOARD, MUMBAI.

EXT.P2 DO. DO.

EXT.P3 DO. DO.

EXT.P4 CERTIFICATE ISSUED BYO MERCANTILE MARINE DEPARTMENT, MUMBAI.

EXT.P5 DO. DO.

EXT.P6 DO. DO.

EXT.P7 TRUE COPY OF LICENCE.

EXT.P8 TRUE COPY OF CERTIFICATE.

EXT.P9 DO. DO.

EXT.P10 MINUTES DT. 22-6-1957.

EXT.P11 LETTER DT.31-7-1957.

EXT.P12 LETTER DT. 10TH AUGUST.

EXT.P13 LETTER DT. 17-11-2001

EXT.P14 REPLY DT. 5-12-2001.

EXT.P15 LETTER DT. 4-12-2001.

EXT.P16 LETTER DT. 14-12-2001.

EXT.P17 COMMUNICATION DT. 27-12-2001.

EXT.P18 REPLY DT. 23-1-2002.

EXT.P19 LETTER DT. 21-2-2002.

EXT.P20 LETTER DT. 17-4-2002.

EXT.P21 NOTICE DT. 20-5-2002

EXT.P22 COMMUNICATION DT. 20-5-2002

EXT.P23 REPRESENTATION DT. 23-5-2002.

EXT.P27 STATEMENT SHOWING REGISTERED TONNAGE OF BARGES.

RESPONDENTS' EXHIBITS:

EXT.R1(a) ACT 10/1092.

EXT.R1(b) RULES REGARDING GRANT OF CERTIFICATES.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 13586 of 2002

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Dated this, the 3rd January, 2007.

J U D G M E N T

Petitioner is a shipping Company having its registered office at Bombay and branches, among other places, at Cochin, Willingdon Island. The Company is the owner of a fleet of vessels comprising of mini bulk carriers, general cargo carriers, chemical carriers, petrol carriers, water supply carriers , tug and launches. The Company has business arrangements for operating vessels on both the East and West coasts of India.

2. The F.A.C.T, Udyogamandal, invited tenders from experienced transport contractors for transportation of bulk raw materials like sulphur and rock phosphate by self propelled barges from Cochin Port, W. Island to FACT Cochin, Ambalamedu and Udyogamandal Division. Many established transport contractors participated in the bid, including a Kerala Government owned Corporation named, Kerala Inland Navigation Corporation Ltd., (KINCO). The petitioner quoted an amount of Rs. 52.59 per MT for such transportation as against the offer of KINCO at Rs. 102 per MT. Petitioner's bid was accepted and a contract was entered into between the FACT and the petitioner for the transport of raw materials. The petitioner brought barges to the Willingdon Island for effecting transport of the raw materials. The workers of KINCO raised problems obstructing the petitioner from executing the contract, which compelled the petitioner to file O.P. No. 30480/2001 seeking police protection for the petitioner and its workers and barges for effecting transportation as per the contract, without any obstruction from KINCO and other trade unions. This Court issued directions to the police to give protection to the petitioner, its barges and employees for carrying out the transportation as per the contract. Writ appeals were filed against that judgment, namely, W.A. Nos.

4100, 4101 and 4073 of 2001 by three trade unions. In those writ appeals, the Unions took up the contention that the petitioner's barges were not fit for operation in the backwaters and therefore the petitioner should be prevented from operating such barges in the backwaters. However, a Division Bench of this Court did not accept those contentions and the writ appeals were also dismissed and from 1-1-2001, the petitioner has been executing the transportation work on the basis of the work order issued by the FACT.

3. In addition to the existing barges at Cochin, the petitioner brought from Bombay to Cochin three of their barges, which barges were registered and licensed by the Mercantile Marine Board, Bombay as they were being used in Bombay. The licences issued by the Mercantile Marine Board, Bombay are produced as Exts. P1, P2 and P3. For the purpose of bringing these vessels from Bombay to Cochin, the petitioner obtained Exts. P4, P5 and P6 certificates from the Mercantile Marine Department, Bombay regarding the seaworthiness of the vessels. After reaching Cochin, the petitioner took out registration and licences under the Cochin Harbour Craft Rules, which are necessary for the purpose of undertaking transportation of raw materials from Cochin Port to Udyogamandal and Cochin Divisions of the FACT. These licences and registration, namely, Exts. P7, P8 and P9 in respect of the three vessels, were issued by the Cochin Port Trust after necessary inspection and survey of the vessels as required under the provisions of the Cochin Harbour Craft Rules and satisfying themselves about the seaworthiness of the petitioner's vessels.

4. While transportation work was so being carried out by the petitioner with those three vessels also, allegedly, at the instance of KINCO and their workers, the 3rd respondent started taking a stand

that the petitioner is liable to take out licences under the Cochin Public Canal and Backwaters Navigation Act, 1092 without which the petitioner cannot use the barges for transportation work in the canals and backwaters in Kerala. This led to issue of Exts. P13, P17, P21 and P22 whereby the 3rd respondent threatened the petitioner that unless they take out licences under the Cochin Public Canal and Backwaters Navigation Act, 1092, their vessels would be seized. It is under the above circumstances that the petitioner has approached this Court challenging Exts. P13, P17, P21 and P22 issued by the 3rd respondent and for a declaration that respondents 2, 3 and 4 have no right or authority to insist or direct the petitioner to take out further licences from the 3rd respondent for their vessels namely, M/V. Royal Timblo - 8, BBS Bhilai and M/V. Screevani.

5. Petitioner's contention is that going by Exts. P10, P11 and P12, the Government of Kerala themselves have agreed that once registration and licence under the Cochin Harbour Craft Rules have been obtained for a particular vessel, for plying the vessels within the public canals and backwaters, no separate registration or licence is required under any other Act, including the Cochin Public Canal and Backwaters Navigation Act, 1092 and therefore the respondents 2, 3 and 4 had no manner of jurisdiction or power to require the petitioner to take out further licence under the Cochin Act or to seize the vessels belonging to the petitioner on that ground.

6. The Cochin Port Trust has filed a counter affidavit supporting the contentions of the petitioner.

7. In the counter affidavit filed on behalf of the 1st respondent, the claims of the petitioner are disputed. In paragraph 9 of the counter affidavit, which is relied on by the learned Government Pleader, it is submitted that plying of vessels without any valid licence

in the canal and backwater area is illegal and punishable. The said paragraph reads as follows:

> "Regarding the averments in para 9 it is submitted that the plying of vessels without any valid license in the canal and backwater area is illegal and punishable. By virtue of having registration from Cochin Port Trust, the petitioner's vessel could not ply in the canal area without the permission or license from the concerned canal authorities. The contention that the 3rd respondent acted at the instance of KSINCO and their employees to prevent the petitioner from operating vessels i the backwaters is false. The 3rd respondent is discharging his official duties independently, as per rules. The allegation against the intervention of minister (Transport) in the matter is totally false and baseless. Hence liable to be rejected."

8. I have considered the rival contentions in detail.

9. Before dealing with the contentions of the parties, I may note one provision under the Inland Vessels Act, 1970. Section 19-I of that Act reads thus:

> "**19-I Prohibition against transfer of certificate of registration:**- (1) A certificate of registration granted in respect of an inland mechanically propelled vessel shall be used only for the lawful navigation of that vessel.
>
> (2) A certificate of registration in respect of an inland mechanically propelled vessel issued by a registering authority i one State shall be valid for that State only, but where any such vessel plies in inland waters of any other State, nothing in this section shall be deemed to require the owner or master o the vessel to obtain a fresh certificate of registration in relation to the State or States in which the vessel is not so registered.
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> (3) When an inland mechanically propelled vessel registered in one State has been kept in another State for a period exceeding twelve months, the owner or master of the vessel shall make an application under section 19-K to the registering authority, within whose jurisdiction the vessel then is, for the transfer of registry fro the registering authority of the place where the vessel is registered."

Although, this provision may not directly be applicable to the issue before me, it would give some indication as to the intention of the legislature regarding the requirement of separate licences under different legislations in two States when vessels possess registration and licences as per the statutes of one particular State. In fact, from

Ext. P12, it can be seen that the Kerala State themselves have been confronted with a difficult situation in the matter of insisting upon licences under the Cochin Harbour Craft Rules in respect of their vessels and therefore by Ext. P12, the Government requested the Cochin Port Trust for appropriate consultation with them in the matter which led to a conference among the officers of the Cochin Port Trust, Ministry of Transport of the Government of India, Department of Public Works and Communications of the Government of Kerala, Chief Engineer (General and Irrigation) of the State of Kerala, Principal Officer of the Mercantile Marine Department, Madras, Deputy Conservator of Cochin Port Trust and Secretary of Cochin Port Trust, in which the parties agreed as follows:

> "In view of the agreements reached on the above points, it was decide that the State craft should be exempted from the requirements of the Port's Safety Standards till 31st March 1958 and the question of licensing of the State craft with the Port should be dropped.
>
> In this connection it was also pointed out to the State Government Representatives that while their craft had to follow the International Rule of the Road whilst plying within Port limits, they were following a diametrically opposite rule whilst plying the State waters. This led to several navigational difficulties and caused even accidents. The State representatives agreed to consider the question of revising their rules i this regard so as to conform to the International Rule of the Road while plying in State waters also.
>
> Item 2
>
> The Representatives of the State Government agreed that the certificates of competency issued by the Port under the Cochin Harbour Craft Rules would be recognised by them for purposes of enabling the vessel registered under those rules to ply in State canals or backwaters.
>
> Shri G. Madhavan, Secretary to Government, Kerala State informed the meeting that the decisions arrived at were subject to the approval of the State Government."

(Errors as in the original)

Since these decisions were subject to the approval of the State

Government, subsequently, by Ext. P11, Government accepted the conclusions reached at the said conference. Both sides agree before me that this agreement is still in force. If that be so, I am at a loss to understand how respondents 2, 3 and 4 can, notwithstanding the said agreement entered into by the State Government with the Cochin Port Trust, take a stand contrary to the same by insisting that the petitioner should take out licences under the Cochin Public Canal and Backwaters Navigation Act, 1092 despite their having obtained licences under the Inland Vessels Act, 1917 and Cochin Harbour Craft Rules.

10. Of course, another contention has been raised before me to the effect that since the canals through which the petitioner is plying their vessels are lengthy and narrow and only limited, number of vessels are plying in these areas, such large vessels used by the petitioner may cause damage to the navigation channel in the canals and backwaters in Kerala. However, the petitioner has, in their reply affidavit, produced Ext. P27 which shows that very many other vessels which are larger in capacity than that of the petitioner's vessels are being allowed to navigate through the canals and backwaters in Kerala, which are the ones being used by the petitioners also. Respondents 1 to 4 could not, with any material on record, dispute the said categoric contention of the petitioner and therefore, I am not inclined to accept that contention also. .

In view of my above findings, I am satisfied that Exts. P13, P17, P21 and P22 are unreasonable and unsustainable. Accordingly, they are quashed. It is further declared that respondents 2, 3 and 4 have no right or authority to insist or direct the petitioner to take further licence from the 3rd respondent for their vessels, viz, M/V. Royal Timblo - 8, BBS Bhilai and M/V. Screevani and that they have no

power or right to seize petitioner's vessels which are being used for transporting raw materials to the various Divisions of the FACT, pursuant to the contract between FACT and the petitioner. There will be a further direction to respondents 2 to 4 not to obstruct in any way the use of the petitioner's barges for such transport of raw materials in accordance with the contract with FACT. The original petition is allowed as above but, without any order as to costs.

Sd/- S. Siri Jagan, Judge.

Tds/